

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PATRICK DUNCAN,)	Case No. 1:07 CV 839
)	
Petitioner,)	Judge Dan Aaron Polster
)	
vs.)	<u>NUNC PRO TUNC¹ MEMORANDUM</u>
)	<u>OF OPINION AND ORDER</u>
DAVID BOBBY, WARDEN,)	
)	
Respondent.)	

Before the Court is the Report and Recommended Decision of Magistrate Judge Davis S. Perelman (**ECF No. 8**). The Magistrate Judge recommends that the Court dismiss the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Patrick Duncan (“Petition”) (**ECF No. 1**). Duncan was convicted by a jury of one count of felony murder for which he was sentenced to fifteen years to life imprisonment; one count of reckless homicide for which he was sentenced to five years incarceration; two counts of aggravated burglary for which he was sentenced to five years incarceration on each count – all of which were to run concurrently. The counts all included firearms specification for which Duncan was sentenced to an addition three years incarceration, for a total sentence of eighteen years to life imprisonment.

¹This *Nunc Pro Tunc* Memorandum of Opinion and Order is being issued in place of the Memorandum of Opinion and Order issued earlier today (i.e., January 8, 2008) (**ECF No. 11**). The Court is issuing this order in place of that one solely to correct a clerical error in the second sentence. *Compare ECF No. 11*, at 1 with *ECF No. 13*, at 1. The correction has no impact on the substantive ruling of the original Memorandum of Opinion and Order.

Duncan claims that his convictions are unconstitutional on the following three grounds: (1) his conviction for felony murder violates the Fourteenth Amendment because the trial judge refused to instruct the jury on the defense of accident, where there was evidence in the record to support the defense; (2) his conviction for felony murder violates the Sixth Amendment right to confront and cross-examine witnesses against him because the Court allowed a police officer to testify about what the decedent said to him about Duncan's actions prior to his death; and (3) the indictment was constitutionally defective because it failed to assert the offense of violence underlying his felony murder count.

In a comprehensive and well-written opinion, the Magistrate Judge addressed on the merits each of these claims for relief, and recommended that the petition be dismissed. Duncan timely filed Objections to the Magistrate's Report and Recommendations ("Objections") (ECF No. 10). The Court has reviewed the Objections which largely contend that the Magistrate Judge did not understand the arguments set forth in Duncan's Petition. In fact, Duncan's objections are no more than a reiteration of the arguments made in his Petition, all of which the Magistrate Judge addressed directly and appropriately.

Accordingly, the Court **OVERRULES** the Objections (ECF No. 10) and **ADOPTS** the Magistrate Judge's Report and Recommended Decision (ECF No. 8) for the reasons stated therein. Thus, the Petition (ECF No. 1) is hereby **DENIED**.

IT IS SO ORDERED.

/s/Dan Aaron Polster January 8, 2008
Dan Aaron Polster
United States District Judge